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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/866,866
Filing Date: May 29, 2001
Appellant(s): SORRENTINO ET AL.

Gary Myles

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/20/07 appealing from the Office action mailed 05/14/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

Claims 16, 22-24 and 29-34 were rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **This is a New Matter rejection**.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6313277	ROSS et al	11-2001
6,485,933	BANDMAN et al	11-2002
4281061	ZUK et al	07-1981

Owens et al, 1994, Journal of Immunological methods, V.168, pages 149-165.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Issue I: Rejection under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims 16, 22-24 and 29-34 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 16, 22-24 and 29-34 are indefinite and ambiguous in the recitation of BCRP protein in the second line. Recitation of a protein without providing SEQ ID NO for the protein is indefinite and ambiguous because different laboratories may have the same name for a different protein. It is also noted that the instant Specification disclosed that BCRP is referred to when said protein is obtained from any mammalian source, but as mBCRP or huBCRP when obtained from murine or human respectively (see page 3, lines 25-30 in particular). Appellant should provide SEQ ID Nos for BCRP as disclosed in the instant specification on pages 8 and 15.

Issue II: Rejection under 35 U.S.C. 102(e)

A. Claims 16, 22 and 31-34 stand rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,313,277.

US Patent' 277 teaches an isolated polyclonal and monoclonal antibody that binds to BCRP (see entire document, column 4, lines 50-60 in particular).

Although the reference is silent about the antibody binding to an extracellular portion of BCRP or does not bind to denatured BCRP, said functional limitation would be inherent properties of the referenced antibody, because the referenced antibody was obtained against the same antigen as claimed. Since the office does not have a laboratory to test the reference antibodies, it is applicant's burden to show that the reference antibodies does not binds to denaturated BCRP as

recited in the claims. See *In re Best*, 195 USPQ 430, 433 (CCPA 1977); *In re Marosi*, 218 USPQ 289, 292-293 (Fed. Cir. 1983); *In re Fitzgerald et al.*, 205 USPQ 594 (CCPA 1980).

It is noted that the instant claims 31-34 recite a process of producing a monoclonal antibody that is different from the referenced monoclonal antibody that binds to BCRP. However, the instant claims are drawn to a product (antibody) and the patentability of the product does not depend on its method of production. In re Thrope, 227 USPQ 964,966 (Fed. Cir. 1985). See MPEP 2113.

This position is further supported by the recent decision of the court which states "IF APPLICANT HAS DISCLOSED FULLY CHARACTERIZED ANTIGEN, EITHER BY STRUCTURE, FORMULA, CHEMICAL NAME, OR PHYSICAL PROPERTIES, OR BY DEPOSITING PROTEIN IN PUBLIC DEPOSITORY, THEN APPLICANT CAN CLAIM ANIBODY BY ITS BINDING AFFINITY TO THAT DESCRIBED ANTIGEN" Noelle v. Lederman, 355 F.3d 1343 (Fed. Cir. 2004). Here, US Patent '277 disclosed a fully characterized BCRP antigen by its structure.

The reference teaching anticipates the claimed invention.

B. Claims 16, 22-24 and 29-34 stand rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,485,933.

US Patent' 933 teaches an isolated polyclonal and monoclonal antibody that binds to BCRP (see entire document, Abstract and column 16, lines 15-30 in particular). US Patent' 933 further teaches that said antibody is chimeric or humanized or attached to detectable label (see overlapping columns 18 and 19).

Although the reference is silent about the antibody binding to an extracellular portion of BCRP or does not bind to denatured BCRP, said functional limitation would be inherent properties of the referenced antibody, because the referenced antibody was obtained against the same antigen as claimed. Since the office does not have a laboratory to test the reference antibodies, it is

applicant's burden to show that the reference antibodies does not binds to denaturated BCRP as recited in the claims. See *In re Best*, 195 USPQ 430, 433 (CCPA 1977); *In re Marosi*, 218 USPQ 289, 292-293 (Fed. Cir. 1983); *In re Fitzgerald et al.*, 205 USPQ 594 (CCPA 1980).

It is noted that the instant claims 31-34 recite a process of producing a monoclonal antibody that is different from the referenced monoclonal antibody that binds to BCRP. However, the instant claims are drawn to a product (antibody) and the patentability of the product does not depend on its method of production. In re Thrope,227 USPQ 964,966 (Fed. Cir. 1985). See MPEP 2113.

This position is further supported by the recent decision of the court which states "IF APPLICANT HAS DISCLOSED FULLY CHARACTERIZED ANTIGEN, EITHER BY STRUCTURE, FORMULA, CHEMICAL NAME, OR PHYSICAL PROPERTIES, OR BY DEPOSITING PROTEIN IN PUBLIC DEPOSITORY, THEN APPLICANT CAN CLAIM ANIBODY BY ITS BINDING AFFINITY TO THAT DESCRIBED ANTIGEN" Noelle v. Lederman, 355 F.3d 1343 (Fed. Cir. 2004). Here, US Patent '933 disclosed a fully characterized BCRP antigen by its structure.

The reference teaching anticipates the claimed invention.

Issue III: Rejection under 35 U.S.C. 103(a)

A. Claims 16, 23, 24 and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,313,277 in view of Owens (1994).

The teaching of US Patent' 277 has been discussed, supra.

The claimed invention differs from the reference teaching in that US Patent '277 does not explicitly teach an isolated antibody, wherein said antibody is chimeric, as claimed in claim 23 or humanized as claimed in claim 24 or attached to a detectable label, as claimed in claim 29.

Owens *et al.,* teach the modification of murine antibodies such as a chimeric antibody, a single chain antibody, or a humanized antibody, monoclonal antibody technology, chimeric antibody or attaching antibody to a detectable label. Owens *et al* further teach humanized antibodies use in therapy of human diseases or disorders, since the human or humanized antibodies are much less likely to induce an immune response. Also, antibody fragments are the reagents of choice for some clinical applications, and the chimeric antibodies offer the ability to mediate antigen-dependent cytotoxicity and complement-dependent cytotoxcity. Owens *et al* further teach that labeled antibodies can use for the detection or diagnosis (see the entire document).

Thus, all the claimed elements were known in the prior art and one of skill in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention (see *KSR International Co v Teleflex Inc*., 550U.S.-, 82 USPQ2d 1385, 2007).

Thus it would have been obvious to one of the ordinary skill in the art at the time the invention was made to produce the monoclonal antibody taught by US Patent '277 as chimeric, humanized antibody, or attached to the detectable label with a reasonable expectation of success because the prior art suggests that humanized antibodies are much less likely to induce an immune response and because the antibody fragments are the reagents of choice for some clinical applications and the chimaeric antibodies offers the ability to mediate antigen-dependent cytotoxicity and complement-dependent cytotoxcity and labeled antibodies can use for the detection or diagnosis.

Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

B. Claims 16 and 30 stand rejected under 35 U.S.C. 103(a) as being obvious over US Patent 6,313,277 or US Patent 6,485,933 each in view of U.S. Patent No. 4,281,061

The teaching of US Patent 6,313,277 or US Patent 6,485,933 have been discussed, supra.

US Patent 6,313,277 or US Patent 6,485,933 do not teach a kit comprising in a suitable container the antibody that binds to BCRP.

US Patent '061 teaches that reagents of the pharmaceutical compositions can be provided as kits as a matter of convenience, optimization and economy of the users (see col 22, line 62 - col 23, line 4 in particular).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the teaching of US Patent '061 to those of US Patent '933 or US Patent '277 to obtain a claimed kit comprising the antibody that binds to BCRP.

One of ordinary skill in the art at the time the invention was made would have been motivated to do so, because assembling the reagents in a kit format is a matter of convenience, optimization and economy of the users, as taught by US Patent '061, and the antibody that binds to BCRP as taught by US Patent 6,313,277 or US Patent 6,485,933 can be in a pack or a kit for convenience and economy.

From the combined teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention.

Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

(10) Response to Argument

Issue I: Rejection under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims 16, 22-24 and 29-34 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

At page 6 of the Brief, Appellant argues that the term "BCRP" as used and defined in the specification refers to a genus of proteins from individual mammalian species. SEQ ID numbers are provided for individual species-specific BCRP sequences in the specification . Also, "BCRP" is defined on page 15, lines 6-7 as including "all of such ATP transport proteins obtained from any mammalian source . In the pending claims, "BCRP" is used to denote the genus of Breast Cancer Resistance Proteins, while "human or murine BCRP" is used to denote the species-specific Breast Cancer Resistance Protein, huBCRP or mBCRP. The instant claims specifically include references to "human BCRP" or "huBCRP" and "murine BCRP" or "mBCRP," where appropriate, to refer to species-specific BCRPs and their respective SEQ IDs as set forth in the specification.

Contrary to Appellant's assertion, the use of the term "BCRP" as a sole means to define a genus of proteins without providing SEQ ID NO is indefinite and ambiguous because "BCRP" is merely a laboratory designation which does not clearly define the claimed product, since different laboratories may use the same laboratory designation s to define completely distinct proteins. Appellant should provide SEQ ID NOs for specific BCRPs as disclosed on pages 8 and 15.

Issue II: Rejection under 35 U.S.C. 102(e)

A. Claims 16, 22 and 31-34 stand rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,313,277.

On page 10 of the Brief, Appellant asserts that UP Patent '277 disclosed that a polyclonal antibody capable of binding to BCRP can be prepared by immunizing a mammal with a preparation of BCRP or functional derivative. US Patent '277 also disclosed that monoclonal antibodies can be produced by immunizing splenocytes with activated BCRP. Appellant therefore concluded that UP Patent '277 does not in fact disclose the actual generation of any antibody, let alone one that would necessarily bind to an extracellular portion of BCRP and not to denatured BCRP.

On page 11 of the Brief, Appellant point out to the declaration by Dr. Sarkadi. In said declaration it is stated that the US Patent '277 only teaches antibodies prepared against purified protein, not against a BCRP in its natural conformation. Dr. Sarkadi further indicated that it is clear that antibody raised against a purified protein would not necessarily bind to the extracellular portion of a BCRP.

1. Contrary to Appellant's position, Patent' 277 teaches an isolated polyclonal and monoclonal antibody that binds to BCRP (see entire document, column 4, lines 50-60 in particular). Moreover, it is noted that the instant specification on overlapping pages 22-24 explicitly disclosed that at the time the invention was made one skill in the art, would know how to generate antibody which would recognize a specific epitopes of BCRP.

Although the reference is silent about the antibody binding to an extracellular portion of BCRP or does not bind to denatured BCRP, said functional limitation would be inherent properties of the referenced antibody, because the referenced antibody was obtained against the same antigen, i.e. not denatured BCRP, as claimed in the instant claims. Since the office does not have a laboratory to test the reference antibodies, it is applicant's burden to show that the reference

antibodies does not binds to denaturated BCRP as recited in the claims. See *In re Best*, 195 USPQ 430, 433 (CCPA 1977); *In re Marosi*, 218 USPQ 289, 292-293 (Fed. Cir. 1983); *In re Fitzgerald et al*., 205 USPQ 594 (CCPA 1980).

It is noted that the instant claims 31-34 recite a process of producing a monoclonal antibody that is different from the referenced monoclonal antibody that binds to BCRP. However, the instant claims are drawn to a product (antibody) and the patentability of the product does not depend on its method of production. In re Thrope,227 USPQ 964,966 (Fed. Cir. 1985). See MPEP 2113.

This position is further supported by the recent decision of the court who states "IF APPLICANT HAS DISCLOSED FULLY CHARACTERIZED ANTIGEN, EITHER BY STRUCTURE, FORMULA, CHEMICAL NAME, OR PHYSICAL PROPERTIES, OR BY DEPOSITING PROTEIN IN PUBLIC DEPOSITORY, THEN APPLICANT CAN CLAIM ANIBODY BY ITS BINDING AFFINITY TO THAT DESCRIBED ANTIGEN" Noelle v. Lederman, 355 F.3d 1343 (Fed. Cir. 2004). Here, US Patent '277 disclosed a fully characterized BCRP antigen by its structure.
With regards to declaration by Dr. Sarkadi.

It is noted that in said Declaration Dr. Sarkadi only acknowledged that a purified membrane-bound protein can have a very different conformation than the conformation that exists when said protein is in its natural state, i.e. expressed on cell membrane. Thus, the antibody taught in US Patent'277 might not have recognized BCRP in its natural conformation. However, it does not provide any direct evidences that antibodies raised against purified BCRP, taught in US Patent'277, would actually not bind to BCRP in its natural conformation. Moreover, at the time the invention was made, it was a well known in the art that antibodies raised against purified membrane-associated proteins were used in flow –cytometry or to detect or target *in vivo* cells expressing said membrane-associated proteins. In other words, one of skill in the art would expect that antibody raised against purified membrane-associated proteins would recognize the same protein when expressed on the cell surface, i.e., in its natural conformation. Moreover, US Patent' 277 clearly stated that BCRP-binding antibodies of the present invention **can be**

administered to patient to reduced resistance to chemotherapy drugs (see column 4, lines 50-60 in particular). One of skill in the art would immediately recognize that to reduced resistance to chemotherapy said antibody would have to bind to the cell expressing said BCRP, i.e. to bind to BCRP in its natural conformation. In other words, US Patent '277 clearly envisions that antibodies of the invention recognized BCRP in its natural conformation.

B. Claims 16, 2-24 and 29-34 stand rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,485,933.

On page 14 of the brief, Appellant asserts that US Patent'933 disclosed a variety of protocols for detecting and measuring the expression of BCRP, using either polyclonal or monoclonal antibodies. Appellant further asserts that US Patent '933 does not, in fact disclose any antibodies. Rather, the US Patent'933 disclosed assay systems such as ELISA or FACS that could be employed to detect the expression of BCRP. Appellant further submits that such prophetic examples do not support the disclosure that the antibody of US Patent'933 would necessarily bind to an extracellular portion of BCRP. Appellant further refers to the Declaration by Dr. Sarkadi to support his position that antibody taught by US Patent'933 would not bind to extracellular portion of BCRP.

Contrary to Appellant's assertion, it is the Examiner's position that US Patent' 933 teaches an isolated polyclonal and monoclonal antibody that binds to BCRP (see entire document, Abstract and column 16, lines 15-30 in particular). US Patent' 933 further teaches that said antibody is chimeric or humanized or attached to detectable label (see overlapping columns 18 and 19). Moreover, the Examiner submits that Appellant's acknowledgment that US Patent' 933 teaches the use of BCRP antibodies in a variety of protocols for **detecting and measuring the**

expression of BCRP, for example in FACS assay, supports the Examiner's position. It would be immediately apparent to one of skill in the art that antibody used for FACS analysis to detect the expression of BCRP binds to an extracellular portion of BCRP, expressed on the cell surface, i.e. to BCRP in its natural conformation. In other words, Appellant acknowledges that antibodies taught by US Patent'933 can recognize BCRP expressed on the surface of the cells, i.e. in its natural conformation.

Although the reference is silent about the antibody not binding to denatured BCRP, said functional limitation would be an inherent propertiy of the referenced antibody, because the referenced antibody was obtained against the same antigen, i.e. non denatured BCRP, as claimed in the instant claims. Since the office does not have a laboratory to test the reference antibodies, it is applicant's burden to show that the reference antibodies does not binds to denatured BCRP as recited in the claims. See *In re Best*, 195 USPQ 430, 433 (CCPA 1977); *In re Marosi*, 218 USPQ 289, 292-293 (Fed. Cir. 1983); *In re Fitzgerald et al*., 205 USPQ 594 (CCPA 1980).

It is noted that the instant claims 31-34 recite a process of producing a monoclonal antibody that is different from the referenced monoclonal antibody that binds to BCRP. However, the instant claims are drawn to a product (antibody) and the patentability of the product does not depend on its method of production. In re Thrope, 227 USPQ 964,966 (Fed. Cir. 1985). See MPEP 2113.

This position is further supported by the recent decision of the court which states "IF APPLICANT HAS DISCLOSED FULLY CHARACTERIZED ANTIGEN, EITHER BY STRUCTURE, FORMULA, CHEMICAL NAME, OR PHYSICAL PROPERTIES, OR BY DEPOSITING PROTEIN IN PUBLIC DEPOSITORY, THEN APPLICANT CAN CLAIM ANIBODY BY ITS BINDING AFFINITY TO THAT DESCRIBED ANTIGEN" Noelle v. Lederman, 355 F.3d 1343 (Fed. Cir. 2004). Here, US Patent '933 disclosed a fully characterized BCRP antigen by its structure.

With regards to the declaration by Dr. Sarkadi.

It is noted that in said Declaration Dr. Sarkadi only acknowledges that a purified membrane-bound protein can have a very different conformation than the conformation that exists when said protein is in its natural state, i.e. expressed on cell membrane. Thus, the antibody taught in US Patent '933 might not recognize BCRP in its natural conformation. However, it does not provide any direct evidence that antibodies raised against purified BCRP, taught in US Patent'933, would actually not bind to BCRP in its natural conformation. Moreover, at the time the invention was made, it was well known in the art that antibodies raised against purified membrane-associated proteins were used in flow–cytometry or to detect or target *in vivo* cells expressing said membrane-associated proteins. In other words, one of skill in the art would expect that antibody raised against purified membrane-associated protein would recognize the same protein when expressed on the cell surface, i.e., in its natural conformation. As has been indicated supra, Appellant acknowledges that the antibody taught by US Patent'933 can be used in a variety of protocols for **detecting and measuring the expression of BCRP**, for example in FACS assay. Moreover, US Patent '933 clearly stated that BCRP-binding antibodies of the present invention **can be administered to patient** as therapeutic to treat or prevent the disorders associated with cell growth (see column 18, lines 10-65 in particular). One of skill in the art would immediately recognize that said antibody would only binds to the cells expressing BCRP on their surface, i.e. to bind to BCRP in its natural conformation. In other words, US Patent '933 clearly envisions that antibodies of the invention would recognize BCRP in its natural conformation.

The references teaching anticipates the claimed invention.

Issue III: Rejection under 35 U.S.C. 103(a)

A. Claims 16, 23, 24 and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,313,277 in view of Owens (1994).

On page 17 of the Brief Appellant asserted that US Patent '277 is not a prior art reference for 102 (e) rejection and thus can not be used in 103 rejection because Owens does not, *inter alia*, remedy the deficiencies in US Patent'277.

Contrary to Appellant's assertion, as has been stated supra, it is the Examiner's position that US Patent '277 is a prior art reference and thus can be used in 103 rejection.

The claimed invention differs from the reference teaching in that US Patent '277 does not explicitly teach an isolated antibody, wherein said antibody is chimeric, as claimed in claim 23 or humanized as claimed in claim 24 or attached to a detectable label, as claimed in claim 29.

Owens *et al.,* teach the modification of murine antibodies such as a chimeric antibody, a single chain antibody, or a humanized antibody, monoclonal antibody technology, chimeric antibody or attaching antibody to a detectable label. Owens *et al* further teach humanized antibodies use in therapy of human diseases or disorders, since the human or humanized antibodies are much less likely to induce an immune response. Also, antibody fragments are the reagents of choice for some clinical applications, and the chimeric antibodies offers the ability to mediate antigen-dependent cytotoxicity and complement-dependent cytotoxcity. Owens *et al* further teach that labeled antibodies can use for detection or diagnosis (see the entire document).

Thus, all the claimed elements were known in the prior art and one of skill in the art could have combined the elements as claimed by known methods with no change in their respective function

and the combination would have yield predictable results to one of ordinary skill in the art at the time of the invention (see *KSR International Co v Teleflex Inc*., 550U.S.-, 82 USPQ2d 1385, 2007).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to produce the monoclonal antibody taught by US Patent '277 as chimeric, humanized antibody, or attached to the detectable label with a reasonable expectation of success because the prior art suggests that humanized antibodies are much less likely to induce an immune response and because the antibody fragments are the reagents of choice for some clinical applications, and the chimeric antibodies offers the ability to mediate antigen-dependent cytotoxicity and complement-dependent cytotoxcity, and labeled antibodies can use for the detection or diagnosis.

Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

B. Claims 16 and 30 stand rejected under 35 U.S.C. 103(a) as being obvious over US Patent 6,313,277 or US Patent 6,485,933 each in view of in view of U.S. Patent No. 4,281,061.

On page 18 of the Brief Appellant asserted that that US Patent '277 and US Patent' 933 are not prior art references for 102 (e) rejection and thus can not be used in a 103 rejection because US Patent '061 does not, *inter alia*, remedy the deficiencies in US Patent'277 or US Patent '933.

Contrary to Appellant's assertion, as has been stated supra, it is the Examiner's position that US Patent '277 and US Patent' 933 are both prior art references and thus can be used in a 103 rejection.

US Patent 6,313,277 or US Patent 6,485,933 does not teach a kit comprising in suitable container the antibody that binds to BCRP.

US Patent '061 teaches hat reagents of the pharmaceutical compositions can be provided as kits as a matter of convenience, optimization and economy of the users (see col 22, line 62 - col 23, line 4 in particular).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the teaching of US Patent '061 to those of US Patent '933 or US Patent '277 to obtain a claimed kit comprising the antibody that binds to BCRP.

One of ordinary skill in the art at the time the invention was made would have been motivated to do so, because assembling the reagents in a kit format is a matter of convenience, optimization and economy of the users as taught by US Paten '061, and the antibody that binds to BCRP as taught by US Patent 6,313,277 or US Patent 6,485,933 can be in a pack or a kit for convenience and economy.

From the combined teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention.

Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michail A Belyavskyi/
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March 14, 2008

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